

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
The Honorable Michael E. Romero**

In re:)	
)	Case No. 05-12056 MER
ROBERT LOUIS STEVENS)	
JODI KAYE STEVENS)	Chapter 13
)	
Debtors.)	

ORDER

THIS MATTER comes before the Court on the Application for Allowance of Interim Attorney's Fees and Reimbursement of Costs for the Law Offices of Stephen Berken (the "Interim Application"). The fees and costs sought in the Interim Application are requested pursuant to 11 U.S.C. §§ 327, 330 and 331.¹ For the reasons stated herein, the Court denies the Interim Application.

No objections have been filed to the Interim Application. Nevertheless, this Court has an independent duty to determine the reasonableness of any fees it approves. *See In re Zamora* 251 B.R. 591, 596 (D. Colo. 2000) ("A bankruptcy judge's duty is to conduct a discrete inquiry into every request for attorney fees and that duty cannot be delegated."); *see also In re Bueno*, 248 B.R. 581, 583 (D. Colo. 2000).

Interim compensation of fees is allowed under § 331 which states:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement. (emphasis added).

Interim fee awards are discretionary, and are subject to reexamination and adjustment during the course of the case. *In re Callister*, 673 F.2d 305, 307 (10th Cir.1982). The Court is cognizant of the fact that it previously allowed interim compensation in one of Debtors' counsel's previous Chapter 13 cases. However, upon further reflection and legal research, the Court questions whether interim fees are allowable in the context of a Chapter 13 case.

¹ Unless otherwise specified, all future statutory references in the text are to Title 11 of the United States Code.

At least one Court addressing this specific issue has determined Chapter 13 debtor's counsel cannot be compensated under § 331. See *In re Young*, 285 B.R. 168, 170 (Bankr. D. Md. 2002) ("the employment of [Chapter 13] debtor's counsel is not subject to prior approval pursuant to 11 U.S.C. § 327, and compensation by the estate is not authorized under Section 331 or Section 330(a)(1)"). Significant to this finding was the existence of a separate subsection under § 330 for compensation of Chapter 13 debtor's counsel – § 330(a)(4)(B).² *Id.* at 171.

Additionally, the United States Supreme Court in *Lamie v. United States Trustee (Lamie)*, 540 U.S. 526 (2004) addressed whether a Chapter 7 bankruptcy attorney seeking compensation for legal services provided to a debtor were allowable under § 330(a)(1). While the Supreme Court's opinion analyzes a different, yet closely related Bankruptcy Code section, it nevertheless provides this Court with guidance on the present issue.

In *Lamie*, the Supreme Court held § 330(a)(1) did not allow a Chapter 7 debtor's attorney to be compensated from the estate unless the attorney was employed by the trustee under § 327 with the approval of the bankruptcy court. *Id.* at 535. As part of its decision, the Supreme Court also stated, "[l]ikewise, § 331's reference to interim compensation for debtor's attorneys most straightforwardly refers to debtor's attorneys authorized under § 327." *Id.* Although the referenced language is arguably *dicta*, it sheds light on how the Supreme Court might analyze a request for interim fees in a Chapter 13 case.

In this case, the Court's docket does not reflect that Debtors' counsel was appointed under § 327. This is not at all unusual, as Chapter 13 debtors' counsel are not required to seek employment under that statutory section. See *In re Alfaro*, 221 B.R. 927, 931 (B.A.P. 1st Cir. 1998) ("the Bankruptcy Code does not require that attorneys who represent Chapter 13 debtors, as opposed to trustees or attorneys who represent debtors-in-possession, file applications with the court for approval."); see also *In re Harris*, 298 B.R. 319, 321 (Bankr. E.D. Tenn. 2003); *In re Young*, 285 B.R. at 170; *In re Mowers*, 160 B.R. 720, 722-23 (Bankr. N.D.N.Y. 1993). Based on the fact Debtors' counsel has not been employed under § 327 in this case, and the language contained in *Lamie*, this Court finds the request contained in the Interim Application must be denied.

However, even if § 331 allowed interim compensation to debtor's counsel in Chapter 13 cases, the Court finds the Interim Application fails to set forth adequately how the fees requested in this case are reasonable under § 330. Specifically, the Application fails to provide, with any degree of specificity, information regarding the reasonableness of the requested fees based on a consideration of the benefit and necessity of such services to the Debtors. Furthermore, the

² Section 330(a)(4)(B) states,

In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

Interim Application does not set forth the attorney's and his associate's hourly billing rates and requests both legal fees and costs, but fails to distinguish the amounts being requested for each category. *See Interim Application.*

Finally, the Court finds the amount of fees and costs being requested on an interim basis is significant, especially in light of the fee applications this Court typically reviews in Chapter 13 cases.³ Based on the amount of fees requested the Court finds it necessary to review the requested fees in *toto* after the Chapter 13 plan is confirmed and then determine whether the request is reasonable under § 330(a)(4)(B). Accordingly,

IT IS ORDERED the Interim Application is DENIED.

Dated September 14, 2006

BY THE COURT

A handwritten signature in black ink, appearing to read "Michael E. Romero", with a stylized, flowing script.

Michael E. Romero
United States Bankruptcy Judge

³ The Court notes the presumptively reasonable fee in this district is \$1,800 for Chapter 13 cases that have achieved confirmation. *See Second Amended General Procedure Order 2001-1 and General Order 2004-1.*